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VIA EMAIL

Dear Mr. Holloman,

We write to urge the Roswell City Council to reject the proposed changes to Roswell Zoning Ordinance Article 19 and 20: I-1 Light Industrial District and I-2 Heavy Industrial District, which will make it impossible to provide shelter to the majority of people experiencing homelessness in Roswell.

If enacted, the proposed zoning ordinance would make it impossible for the city and citizens of Roswell to meet the vital need for housing and to reduce homelessness in the city. In November 2017, the City of Roswell began evicting individuals living in the Berrendo riverbed and issuing citations for trespass to anyone who attempted to remain. There is a large unmet need for housing caused by the evictions and the closing of the Rivers of Life men's and women's shelters. Even with an upsurge of community support for new transitional housing in Roswell over the last 6 months and the recent reopening of the shelters, both with very limited in space, the vast majority of individuals experiencing homelessness in Roswell have been without shelter through the cold winter months. There is currently no shelter specifically for families experiencing homelessness and the current facilities do not have the physical capacity to expand to meet the present need, leaving these individuals and families with no choice but to struggle for survival in public places.

The proposed zoning ordinance restricts any homeless shelter to two industrial zones in Roswell and requires that any facility be on a plot that is at least 2 acres large, have at least an 8 foot fence, and be 500 feet from any other residential zone or any residential use park, public building or youth facility. Zoning maps for the city of Roswell show that there are no plots in the restricted zones that are 2 acres in size.¹ Indeed, the intention of the ordinance is to prevent homeless shelters from operating in Roswell. At the November 13, 2017 Infrastructure Meeting City Planning Manager Morris explained that he utilized the same zoning restrictions that exclude "sexual oriented

¹ Proposed Changes to Articles 4, 19 and 20 of the Roswell Zoning Ordinance (January 2018) https://www.roswell-nm.gov/AgendaCenter/ViewFile/Agenda/_01232018-1305.

businesses” from Roswell to exclude homeless shelters in this ordinance. This exclusion is unconstitutionally discriminatory and violates the Fair Housing Act.

The New Mexico Center on Law and Poverty (Center) is a non-profit law firm dedicated to advancing economic and social justice through education, advocacy and impact litigation. We work with low-income New Mexicans on a variety of issues to improve living conditions, increase opportunities and protect the rights of people living in poverty.

The American Civil Liberties Union of New Mexico (ACLU-NM) is dedicated to preserving and advancing the civil rights and legal freedoms guaranteed by the United States Constitution and the Bill of Rights in New Mexico.

Disability Rights New Mexico (DRNM) is a private, non-profit organization whose mission is to protect, promote and expand the rights of persons with disabilities. We are the designated protection and advocacy program for New Mexico, and as such we have authority under federal law to pursue legal, administrative and other remedies on behalf of persons with disabilities.

I. The Proposed Ordinance Violates the Fair Housing Act and is Unconstitutional

The proposed ordinance restricts access to housing for people in Roswell who are homeless, most of whom experience mental and physical disabilities. Data collected by the Roswell Homeless Coalition and used by the Department of Housing and Urban Development shows that two-thirds of the people experiencing homelessness in Roswell are disabled. As of March 2017, there were 120 individuals experiencing homelessness in the city of Roswell.² Of those 120 individuals, 85 reported a mental or physical disability.³ Over the past several years the number of homeless persons in Roswell has grown significantly.

Transitional housing is protected by the Fair Housing Act (FHA).⁴ The FHA makes it illegal to deny access to housing on the basis of disability.⁵ The proposed zoning ordinance violates the FHA because it will have a disparate impact on people with disabilities by excluding them from accessing housing in the city of Roswell. The FHA defines disability to include mental illness, developmental disabilities, physical impairments, persons who test positive for HIV, wet or dry alcoholics and persons recovering from addiction to an illegal drug.⁶ Ordinances that generally restrict the operation of homeless shelters have been struck down by courts when excluded occupants are individuals with physical and mental disabilities⁷ and also where the proposed ordinance “has the

² New Mexico Coalition to End Homelessness, Chavez County Point In Time Report (2017).

³ *Id.*

⁴ *Id.* The FHA includes homeless shelters in the definition of a statutorily protected “dwelling” under New Mexico law. See *House, Inc. v. City of Boise*, 490 F.3d 1041, n.2 (9th Cir. 2006); *U.S. v. Hughes Memorial Home*, 396 F. Supp. 544, 549 (W.D. Va. 1975).

⁵ 42 U.S.C. 2604(f).

⁶ 42 U.S.C. 3602(h).

⁷ See *Regional Economic Community Action Program, Inc. v. City of Middletown*, 294 F.3d 35, 45 (2nd Cir. 2002) (holding that the practices of making unavailable or denying a dwelling to an individual because of a disability through a discriminatory zoning ordinance is illegal under the FHA); *Human Resource Research and Management Group, Inc. v. County of Suffolk*, 687 F. Supp. 2d 237, 254 (E.D.N.Y. 2010) (“the FHA also applies to municipal zoning decisions”).

effect of barring virtually all handicapped people from boarding or rooming houses.”⁸ Federal courts have also struck down ordinances that do not make reasonable accommodations for individuals who are disabled. For example, an ordinance preventing the expansion of homeless shelter where seventy-five percent of the occupants were individuals with physical and mental disabilities was struck down for failing to make reasonable accommodations for individuals with disabilities to obtain access to housing.⁹

The equal protection clauses of the United States and New Mexico Constitutions also prohibit governments from making laws that discriminate against people with disabilities.¹⁰ In *City of Cleburne, Tex. v. Cleburne Living Ctr.*, the Supreme Court held that a variance in zoning for a group home for individuals with disabilities violated the equal protection clause.¹¹ The New Mexico Supreme Court held in *Breen v. Carlsbad Municipal Schools* that “the historical discriminatory treatment of persons with mental disabilities shows that the courts should be sensitive to possible discrimination against persons with mental disabilities contained in legislation that purports to treat them differently based solely on the fact that they have a mental disability.”¹²

The fact that some City Council members and residents of Roswell strongly oppose living and conducting daily life in proximity to people who are homeless does not justify illegal discrimination. Courts have specifically noted that “no more in my backyard” or “NIMBY” opposition to transitional homeless housing projects are not legal justification for discriminatory ordinances.¹³

Instead of addressing the severe lack of housing and shelter in Roswell, the City chose instead to make the status of being unhoused a crime for the large number of people sleeping outside within the city limits, particularly the Berrendo riverbed. The City of Roswell’s continued efforts to criminalize homelessness by issuing citations to people who sleep or otherwise occupy public places violates the 1st, 8th and 14th Amendments. Individuals in this country have significant liberty interests in standing on sidewalks and in other public places, and in traveling, moving, and associating with

⁸ *Support Ministries for Persons with AIDS, Inc. v. Village of Waterford, N.Y.*, 808 F. Supp. 120, 136 (1992). See also *Children’s Alliance v. City of Bellevue*, 950 F. Supp. 1491, 1495 (1997) (holding that an ordinance limiting housing for homeless youth was discrimination on the basis of disability and familial status violated the FHA).

⁹ *Turning Point, Inc. v. City of Caldwell*, 74 F. 3d 941 (9th Cir. 1996).

¹⁰ U.S. Const. amend. XIV; N.M. Const. art. II, Sec. 18; *Wagner v. AGW Consultants*, 114 P.3d 1050 (N.M. 2005) (holding that the New Mexico constitution’s equal protection clause mandates that all similarly situated individuals be treated equally); *Breen v. Carlsbad Mun. Sch.*, 120 P.3d 413, 416, 427 (2005) (The Carlsbad Municipal School District “violate[d] equal protection by discriminating against the mentally disabled in violation of equal protection guarantees”); *Madrid v. St. Joseph Hosp.*, 928 P.2d 250, 261 (N.M. 1996) (“The equal protection clauses found in the United States and New Mexico Constitutions prohibit the government from creating statutory classifications that are unreasonable, unrelated to a legitimate statutory purpose, or are not based on real differences”).

¹¹ 473 U.S. 432 (1985). See also *A Soc’y Without a Name for People Without a Home Millennium-Future-Present v. Commonwealth of Virginia*, 699 F. Supp. 2d 787, 802 (E.D. Va. 2010).

¹² *Breen* 120 P.3d at 413.

¹³ *City of Peekskill v. Rehabilitative Support Services, Inc.*, 806 F. Supp. 1147 (S.D.N.Y. 1992); See also *Western Presbyterian Church v. Board of Zoning Adjustment*, 849 F. Supp. 77 (D.D.C. 1994) (decision by a city zoning administrator to forbid a church from feeding homeless individuals at different location than the church had previously provided meals was not legally justified by the FHA in response neighbors’ objections to having such a program available in their neighborhood.)

others and that liberty is protected by the Due Process Clause of the Fourteenth Amendment.¹⁴ Punishing unhoused residents of Roswell for sleeping and possessing property outdoors violates the 8th amendment prohibition against cruel and unusual punishment because these actions are unavoidable for people who are homeless. For people who are experiencing homelessness, the “conduct” of sitting, lying or sleeping outside is “involuntary and inseparable from status—they are one and the same, given that human beings are biologically compelled to rest.”¹⁵ Enforcing the City’s anti-camping ordinance when the City has nowhere near the space needed to provide adequate and appropriate shelter for all of the people experiencing homelessness is unconstitutional.¹⁶

II. The City Council Should Table Proposed Zoning Restrictions and Address the Severe Lack of Shelter and Housing in Roswell

To avoid violating state and federal law, the City Council should table the proposed discriminatory amendments to the Roswell Zoning Ordinance. Instead, the Council should work in collaboration with community members to set up a task force of stakeholders to find an appropriate location for permanent supportive housing for individuals experiencing homelessness. Permanent supportive housing is an evidence-based solution to increase community health and safety.¹⁷ Research shows that housing stability improves physical and behavioral health outcomes and reduce the use of crisis services such as emergency departments, hospitals, and jails for individuals experiencing homelessness.¹⁸ Providing a central location in the community where individuals experiencing homelessness can access potable water as well as bathrooms and showers improves health and safety not only for residents of permanent supportive housing facilities, but the surrounding community as well.

We would like an opportunity to meet with you prior to the April 12, 2018 City Council Meeting to discuss the proposed ordinance and options to meet the needs of the community in reducing homelessness. Please contact Sovereign Hager at (505) 255-2840 or

¹⁴ *City of Chicago v. Morales*, 527 U.S. 41, 53-54 (1999).

¹⁵ *Jones v. City of Los Angeles*, 444 F.3d 1118, 1136 (9th Cir. 2007); *Bell v. City of Boise*, 993 F. Supp. 2d 1237 (D. Idaho 2014).

¹⁶ *Id.* See also *Orange County Catholic Worker, et. al, v. County of Orange, et. al.*, 18-CV-00155 Order Granting Temporary Restraining Order (Doc. 53), (entered February 6, 2018 prohibiting Orange County from enforce anti-camping and loitering ordinances used to eject homeless residents from a riverbed where the City did not have alternative housing available.)

¹⁷ National Law Center on Homelessness and Poverty, [Tent City, USA: The Growth of America’s Homeless Encampments and How Communities are Responding](https://www.nlchp.org/Tent_City_USA_2017) 14 (2017) https://www.nlchp.org/Tent_City_USA_2017; CSH and National Health Care for the Homeless Council, [Integrated Care for the Chronically Homeless](https://www.nhchc.org/wp-content/uploads/2011/10/houstonfrequentuserinitiativeprofile_jan16.pdf), (January 2016) https://www.nhchc.org/wp-content/uploads/2011/10/houstonfrequentuserinitiativeprofile_jan16.pdf (a case study of the development of permanent supportive housing in Houston, Texas); U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, [A Primer on Using Medicaid for People Experiencing Chronic Homelessness and Tenants in Permanent Supportive Housing](https://aspe.hhs.gov/pdf-report/primer-using-medicaid-people-experiencing-chronic-homelessness-and-tenants-permanent-supportive-housing/), (July 23, 2014) <https://aspe.hhs.gov/pdf-report/primer-using-medicaid-people-experiencing-chronic-homelessness-and-tenants-permanent-supportive-housing/>.

¹⁸ U.S. Department of Housing and Urban Development, [Housing First in Permanent Supportive Housing Brief 2](https://www.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf) (July 2014) <https://www.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf>.

sovereign@nmpovertylaw.org as soon as possible. We appreciate your attention to this important issue.

Sincerely,

/s/

Sovereign Hager and Lindsay Cutler
NM Center on Law and Poverty

Leon Howard
ACLU-NM

Gary D. Housepian
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CC:

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